



EUROPEAN CENTRAL BANK  
EUROSYSTEM

Pierre VAN DER HAEGEN  
Director General  
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Mr Gavin Sheridan

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LS/PvdH/12/3

**Public access to ECB documents**

Dear Mr Sheridan,

On 9 December 2011, the European Central Bank (ECB) received your request for access to “*any and all communications from the ECB addressed to the Irish Finance Minister (or his direct office) in the month of November 2010*”.

We would like to inform you that during the month of November 2010, the ECB sent two letters from the ECB President to the Irish Finance Minister and no communication was sent to his direct office.

The first letter, dated 18 November 2010, concerns the consultation of the ECB by national authorities on the national implementation of Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims.

Following a thorough assessment of this letter, in line with the requirements established by the Decision of the European Central Bank of 4 March 2004 (ECB/2004/3) on public access to European Central Bank documents, there are no grounds for refusing access to it and therefore it is disclosed to you in full (see attachment).

The second letter, dated 19 November 2010, is a strictly confidential communication between the ECB President and the Irish Minister of Finance and concerns measures addressing the extraordinarily severe and difficult situation of the Irish financial sector and their repercussions on the integrity of the euro area monetary policy and the stability of the Irish financial sector.

Following a thorough assessment of the letter, in line with the requirements established by the Decision ECB/2004/3 on public access to European Central Bank documents, the ECB cannot grant access to this document since the disclosure of its content beyond what is described above would undermine the protection of the public interest as regards the monetary policy of the Union (second indent of Article 4(1)(a) of ECB Decision on public access) and as regards the stability of the financial system in a Member State (seventh indent of Article 4(1)(a) of ECB Decision on public access).

The ECB must be in a position to convey pertinent and candid messages to European and national authorities in the manner judged to be the most effective to serve the public interest as regards the fulfilment of its mandate. If required and in the best interest of the public also effective informal and confidential communication must be possible and should not be undermined by the prospect of publicity. In this case, the confidential communication was aimed at discussing measures conducive to protecting the effectiveness and integrity of the ECB's monetary policy and fostering an environment that ultimately contributes to restoring confidence among investors in the overall solvency and sustainability of the Irish financial sector and markets, which, in turn, is of overriding importance for the smooth conduct of monetary policy.

We should like to draw your attention to the fact that in line with Article 10 of the ECB Decision on public access to ECB documents (ECB/2004/3) "documents released shall not be reproduced or exploited for commercial purposes without the ECB's prior specific authorisation. The ECB may withhold such authorisation without stating reasons."

Moreover, for the sake of good order, we would like to inform you that in line with Article 7.2 of the ECB Decision on public access "in the event of total or partial refusal, the applicant may, within 20 working days of receiving the ECB's reply, make a confirmatory application asking the ECB's Executive Board to reconsider its position".

With kind regards,



Pierre van der Haegen  
Director General Secretariat & Language Services



Roman Schremser  
Head of Secretariat Division



EUROPEAN CENTRAL BANK

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Jean-Claude TRICHET

*President*

Mr Brian Lenihan

Tánaiste and Minister for Finance

Department of Finance

Government Buildings

Upper Merrion Street

Dublin 2

Ireland

18 November 2010

L/JCT/10/1439

Dear Minister,

The ECB has recently been informally asked by some national authorities whether the ECB should be consulted on the national implementation of Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims<sup>1</sup>.

In its advisory function, the ECB stands ready to respond to any formal or informal voluntary national consultations that you may wish to initiate and offer guidance on the transposition measures prepared for Ireland, even if there is no formal obligation to consult, which is the case.

Article 1(2) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions<sup>2</sup> does not formally oblige national authorities to consult the ECB if the exclusive purpose of draft national legislative provisions is the transposition of EU Directives.

As you know, the ECB seeks to promote proactively a harmonised EU-wide implementation of Directive 2009/44/EC in the legislation of the Member States in order to foster maximum transparency and legal

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<sup>1</sup> OJ L 146, 10.6.2009, p. 37.

<sup>2</sup> OJ L 189, 3.7.1998, p. 42.



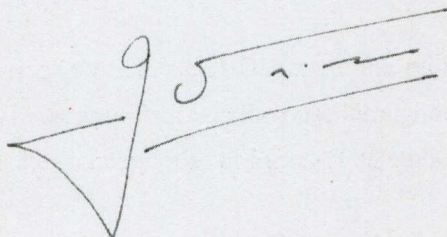
certainty for the closely connected payment and securities settlement systems and to ensure a level playing-field throughout the European Union. The ECB would therefore see merit if national implementation measures are shared with the ECB before adoption, as a way to facilitate consistency among Member States and a level playing field in this area. The ECB as a central point would be able to compare national implementation measures, alert in cases of inconsistencies, and recommend best practices throughout the Union.

The interest of the ECB is based on the importance of Directive 2009/44/EC for the promotion of the smooth operation of payment systems in the Union and for the mobilisation of additional types of collateral in credit operations. The implementation of the following aspects of Directive 2009/44/EC is of particular importance to the ECB:

- (1) as regards the amendments to the Settlement Finality Directive, the protection of night-time settlement and interconnected systems owing to the expected increase in system interoperability, inter alia in line with the Markets in Financial Instruments Directive and the European Code of Conduct for Clearing and Settlement, considering that these changes are crucial to TARGET2-Securities (T2S)<sup>3</sup> and TARGET2<sup>4</sup>;
- (2) as regards the amendments of the Collateral Directive, the mobilisation of credit claims as collateral for credit operations in order to facilitate their use throughout the Union, considering that such collateral is important for the counterparties of Eurosystem monetary policy operations.

In any case, in view of the imminent finalisation of the transposition process in Ireland, I would also like to kindly refer to ECB Opinion CON/2008/37 of 7 August 2008 on the proposal for a directive amending Directive 98/26/EC and Directive 2002/47/EC<sup>5</sup>, which may be helpful for the Department of Finance when transposing Directive 2009/44/EC into national law.

Yours sincerely,



<sup>3</sup> T2S will be a single IT platform for settling almost all securities in Europe, eliminating substantial differences between the settlement of domestic and cross-border transactions.

<sup>4</sup> TARGET2 (Trans-European Automated Real-time Gross settlement Express Transfer) is the Eurosystem's interbank funds transfer system, which is designed to support the Eurosystem's objectives of defining and implementing the monetary policy of the euro area and promoting the smooth operation of payment systems, thus contributing to the integration and stability of the euro area money market.

<sup>5</sup> OJ C 216, 23.8.2008, p. 1.